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Uri Kaufman and Hershel Wein

CV 14

2227

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BROWN, M. J.

IN THE MATTER OF THE COMPLAINT,

Civil Action No.:

- of -

URI KAUFMAN and HERSHEL WEIN, as Owners
of a 2003, 27 foot, Sea Ray, recreational boat, for
Exoneration from or Limitation of Liability,

**COMPLAINT FOR EXONERATION
FROM OR LIMITATION
OF LIABILITY**

Petitioners.

URI KAUFMAN and HERSHEL WEIN, as owners of a 2003, 27 foot, Sea Ray, recreational boat, (hereinafter, "Petitioners"), by their attorneys RUBIN, FIORELLA & FRIEDMAN LLP, as and for their Complaint seeking Exoneration from or Limitation of Liability, allege upon information and belief as follows:

1. This is a proceeding for Exoneration from or Limitation of Liability pursuant to 46 U.S.C. § 30501 *et seq.*, involving admiralty and maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims, as hereinafter more fully appears.

2. Petitioners are the owners of a 2003, 27 foot, Sea Ray, recreational boat (hereinafter, the "Boat").

3. On August 23, 2013, the Boat was upon the navigable waters of the United States,

in vicinity of Reynolds Channel, Atlantic Beach, Long Island, Nassau County, New York, when a boating accident occurred allegedly resulting in fatal injury to Aaron Tepfer, a minor.

4. On March 26, 2014, Rachel Tepfer, as administratrix of the Estate of Aaron Tepfer a/k/a Ari Tepfer, filed a Summons and Verified Complaint, in the Supreme Court of the State of New York, County of Nassau, against Petitioners. Index No. 601340/14. Petitioners anticipate that claims asserted against them will exceed Petitioners interest in the Boat on the date of the accident.

5. Any claim or claims, injuries, losses, damages or expenses arising from the accident were not due to any fault, neglect, or want of care on the part of Petitioners and occurred without Petitioners' privity or knowledge.

6. The value of the Boat after the accident was determined to be \$28,900.00. (**EXHIBIT "A"**, Certificate of Market Valuation).

7. Petitioners, pursuant to Supplementary Rule F of the Federal Rules of Civil Procedure, offer an *Ad Interim* Security in the amount of \$28,900.00, the post-casualty value of the Boat, said amount being not less than the Petitioners interest in Boat on the date of the accident. (**EXHIBIT "B"**, *Ad Interim* Security).

8. Venue in this district is proper.

9. Petitioners commenced this proceeding within six months of receipt of a written notice of claim, which was received on or about October 10, 2013.

10. Petitioners are entitled to Exoneration from Liability for any claims arising from the aforementioned accident, and from any and all claims that have been or may hereafter be made, and Petitioners allege that they have valid defenses thereto on the facts and law.

11. Petitioners claim in the alternative, the benefit of Limitation of Liability provided by

46 U.S.C. §30501 *et seq.*, and the various statutes supplementary thereto and amendatory thereof.

12. Petitioners have provided security herewith in the form of an *Ad Interim* Security sufficient to cover their interest in the Boat, with surety ("*Ad Interim* Security"), for payment into Court whenever the same shall be ordered, as provided for by the aforesaid statute and by Rule "F" of the Supplemental Rules for Admiralty or Maritime Claims of the Federal Rules of Civil Procedure and by the rules and practices of this Court.

WHEREFORE, Petitioners, URI KAUFMAN and HERSHEL WEIN, pray:

- (1) That this Honorable Court adjudge that Petitioners are not liable for any claims, injury, and/or loss arising out of the August 23, 2013 accident, and are therefore entitled to exoneration from liability;
- (2) If Petitioners are adjudged liable, that such liability be limited to Petitioners' interest in the post-casualty value of the Boat plus security for costs in the maximum amount of \$28,900.00, and that Petitioners be discharged therefrom upon the surrender of such interest, and that the money surrendered, paid or secured as aforesaid, to be divided pro-rata according to the above-mentioned statutes among such Claimant(s) as may duly prove their claim saving to all parties any priorities to which they may be legally entitled, and that a decree may be entered discharging Petitioners from all further liability;
- (3) That this Court issue an Order to include the following:
 - (a) Directing the issuance of Notice to all persons asserting claims with respect to the boating accident, which this Complaint seeks Exoneration from or Limitation of Liability to file their respective claims with the Clerk of this Court and to serve undersigned counsel for Petitioners a copy hereof on or before a date to be named in the Notice.
 - (b) Directing Petitioners to file an *Ad Interim* Security as security for the benefit of any and all Claimants, in the amount of

Petitioners interest in the post-casualty value of the Boat as of the date of the accident, with interest at the rate of 6% per annum from the date of said security or whenever the Court shall so order.

- (c) Directing that upon Petitioners filing of an *Ad Interim* Security, an injunction shall issue enjoining the prosecution against Petitioners, their representatives, insurers, and the Boat of any and all claims, suits, action or proceedings, whether or not already begun, with respect to the accident, except in this proceeding.
- (4) That Petitioners may have such other and further relief as the justice of the cause may require.

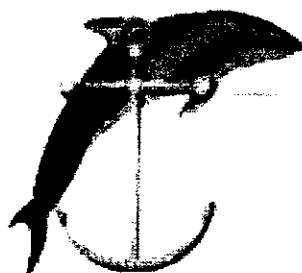
Dated: New York, New York
April 8, 2014

RUBIN, FIORELLA & FRIEDMAN LLP
Attorneys for Petitioners,
URI KAUFMAN and HERSHEL WEIN

By: 

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Our File No.: 0659.27292

Exhibit “A”



Alcus Marine Technical Services, Inc.

P.O. Box 700 • Moriches, New York 11955-0700

(631) 874-1000 • Fax (631) 874-3000

Internet: ALCUSMT@aol.com

April 4, 2014

FILE NUMBER not provided

Mr. Richard Gonzalez
Rubin, Fiorella

RE: Hershel Weiss
Marine Appraisal of 2003 Sea Ray 270 Sundeck

CERTIFICATE OF MARKET VALUATION

This is to certify that the undersigned Marine Surveyor, having been requested to value the Sea Ray 270 Sundeck deck boat of fiberglass construction, built 2002 (2003 model year) at Sea Ray Boats, Div. of Brunswick Corp., Knoxville, TN 37914, Hull Identification Number: US-SERR1174G203, Registration number NY 4985, MA, dimensions 26' 6" L x 8' 10" B x 3', powered by a single Mercruiser MX 6.2 MPI engine with Mercruiser Bravo 3 stern drive, running hours not observed, fully equipped and hull in good condition, estimated value based upon condition observed at the time of inspection on 11-13-13 hereby certify that having availed myself of the best possible information regarding this vessel, I estimate the current market value of the vessel in the sum of Twenty Eight Thousand Nine Hundred Dollars, US

***** \$28,900.00 *****

The above report is a statement of opinion made, signed and submitted without prejudice to the rights and/or interests of whom it may concern

Respectfully submitted,
Alcus Marine Technical Services Inc.

By:  Ronald C. Alcus Jr., AMS, President

Accredited Marine Surveyor • Consultant • Salvage Consultant • Underwater Surveys
Licensed Master, Certified Diver, Member SAMS, NFPA, ABYC, AMI, IAMI, BOAT US

Exhibit “B”

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

IN THE MATTER OF THE COMPLAINT,

Civil Action No.:

- of -

URI KAUFMAN and HERSHEL WEIN, as owners
of a 2003, 27 foot, Sea Ray, recreational boat, for
Exoneration from or Limitation of Liability,

**AD INTERIM SECURITY
FOR VALUE**

Petitioners.

WHEREAS, Petitioners, URI KAUFMAN and HERSHEL WEIN, as owners of a 2003, 27 foot, Sea Ray, recreational boat, (hereinafter the "Boat"), are instituting a proceeding in this Court for Exoneration from or Limitation of Liability in connection with a boating accident which occurred on August 23, 2013, and

WHEREAS, on August 23, 2013, the Boat was upon the navigable waters of the United States, in vicinity of Reynolds Channel, Atlantic Beach, Long Island, Nassau County, New York, as more fully described in the Complaint, when a boating accident occurred resulting in claims for loss and injury as more fully set forth in the Complaint filed herein; and

WHEREAS, Petitioners wish to provide this *Ad Interim* Security in the amount of the post-incident value of the Boat, as security for any and all claims arising from the boating accident as described in the Complaint;

WHEREAS, the value of Petitioners interest in the Boat described above has been fixed at **\$28,900.00**, at the close of the voyage, as appears in **Exhibit "A"** to the Complaint filed herein;

NOW, THEREFORE, in consideration of the premises, **FOREMOST INSURANCE COMPANY**, issuer of Family Boaters Policy, Policy Number 602-0073458665, insuring the subject Boat, having an office and place of business P.O. Box 2450, Grand Rapids, Michigan 49501-2450, hereby undertakes in the sum of **\$28,900.00** with interest thereon at the rate of 6% per annum from the date hereof. If this security is contested, then within thirty (30) days after entry of an Order confirming the report of an independent marine surveyor appointed by the Court to appraise the value of the Boat, **FOREMOST INSURANCE COMPANY** will file in this proceeding a revised *Ad Interim* Security conforming to such appraised value up to the hull insurance limits of liability in its Family Boaters Policy, Policy Number 602-0073458665, and in the interim, this *Ad Interim* Security shall stand as security for all Claims filed in said limitation of liability proceeding;


FURTHERMORE, solely for the limited purposes of any suit based upon this *Ad Interim* Security, **FOREMOST INSURANCE COMPANY** hereby submits itself to the jurisdiction of this Court and designates **RUBIN, FIORELLA & FRIEDMAN LLP**, its agents for service of process, and **FOREMOST INSURANCE COMPANY** agrees, together with the Petitioners, to pay the amount awarded by the final decree rendered by this Court, or an Appellate Court if an appeal intervenes, up to the principal amount of this security, with interest

as aforesaid, unless the value of the Boat shall have been paid into Court or a bond or revised *Ad Interim* Security thereof shall have been given as aforesaid, in which event this Security shall be void.

FURTHERMORE, it is understood and agreed that the execution of this *Ad Interim* Security by the undersigned shall be binding only upon **FOREMOST INSURANCE COMPANY** as aforesaid.

Dated: 4/7/14

FOREMOST INSURANCE COMPANY


P.O. Box 2450
Grand Rapids, Michigan 49501-2450

Our File: 0659,27292

STATE OF Kansas)
COUNTY OF Johnson) SS.:

On this 7th day of April, 2014, before me personally came Brenden McLibb, being by me duly sworn, did depose and say that he/she executed the foregoing *Ad Interim Security*, and that he/she executed same pursuant to his official powers and duties.

Notary Public

